

HUMAN SERVICES BOARD

In re) Fair Hearing No. V-09/09-487
)
Appeal of)

The petitioner is seeking an expungement from the registry maintained by the Department of Disabilities, Aging, and Independent Living (DAIL). The petitioner's request for fair hearing was filed at the same time as she requested a Commissioner's Hearing for expungement.

DAIL has filed a Motion to Dismiss arguing that the Human Services Board does not have jurisdiction to grant petitioner's request for expungement.

The parties have briefed the issue.

The Legislature created a means for individuals to seek expungement from the registry maintained by DAIL. The provision is set out in 33 V.S.A. § 6911(f) which states:

A person may at any time apply to the department for expungement of his or her name from the registry. The petitioner shall have the burden of showing why his or her name should be expunged from the registry.

The Board addressed this provision in Fair Hearing No. 21,249¹ on pages 3-4 stating:

It is clear that this provision is intended to allow the Department the discretion to reconsider keeping reports in the registry once they have already been substantiated. However, this discretion lies solely with the Department in the first instance. ...but, any appeal to the Board of any subsequent action (or inaction) by the Department will be limited to whether the Department abused its discretion in its application of this provision.

In this case, DAIL had not acted at the time the petitioner sent her appeal to the Board (and to the Board's knowledge, DAIL has not yet acted on the expungement request). Petitioner's request for fair hearing is premature.² Under the statute, action on the expungement request must first be taken by DAIL. If DAIL denies the expungement request, petitioner may seek review.

ORDER

The within request for fair hearing is premature, and as a result, petitioner does not have standing to proceed before the Board. DAIL's motion to dismiss is granted.

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¹ In Fair Hearing No. 21,249, the petitioner was out of time appealing the underlying substantiation and the case was dismissed. The Board addressed the avenue for expungement.

² The process is similar to expungement actions from the child protection registry in which a petitioner must first seek a commissioner's review and any subsequent appeal is based on whether the commissioner abused his/her discretion. 33 V.S.A. § 4916c.